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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/930,398	08/15/2001	Christine Carlucci	866.0002	1023
37004	7590	07/11/2006	EXAMINER	
POWER DEL VALLE LLP 233 WEST 72 STREET NEW YORK, NY 10023			EREZO, DARWIN P	
			ART UNIT	PAPER NUMBER
			3731	

DATE MAILED: 07/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/930,398

Applicant(s)

CARLUCCI ET AL.

Examiner

Darwin P. Erez

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 April 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-14 are rejected under 35 U.S.C. 102(b) as being anticipated by US 5,117,510 to Broussard et al. and as evidenced by US 5,305,470 to McKay.

(claim 1) Broussard teaches a device capable of securing medical tubing to a body comprising a circular one-piece fabric band **10**, wherein the band is divided into at least a first closed loop (the main opening of headband **10**) adapted to fit elastically around a portion of the body (Fig. 3) and a second closed loop (either of **18,19,20,21**) such that the band is composed of no more than two layers of fabric anywhere along the length, and wherein the first loop is an elastic headband comprised of terry cloth and the second loop is capable of receiving and holding a medical tubing. It is inherent that a headband made of terry cloth is elastic in order for the headband to fit varying head sizes, as evidenced by US 5,305,470 (col. 3, lines 42-46).

(claim 2) Broussard teaches an elastic headband.

(claim 3) Broussard teaches the fabric band comprising non-irritating material, such as terry cloth.

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(claim 4) Broussard teaches the fabric band lined with friction creating material.

Terry cloth is non-irritating but is also covered with loops, such as in a towel, in order to absorb sweat. The loops would provide friction.

(claim 5) Broussard teaches the loops formed from stitching (stitching 13 for the first loop and buttonhole stitching for loops 18,19,20,21, as seen in col. 2, line 45-47).

(claims 6, 10 and 11) Broussard teaches a device capable of securing medical tubing to a body comprising a circular one-piece fabric band **10**, wherein the band is divided into at least a first closed loop (the main opening of headband **10**) adapted to fit elastically around a portion of the body (Fig. 3), a second closed loop (either of **18,19**) and a third loop (either of **20,21**) such that the band is composed of no more than two layers of fabric anywhere along the length, and wherein the first loop is an elastic headband comprised of terry cloth and the second and third loop are capable of receiving and holding a medical tubing.

(claims 7 and 12) Broussard teaches an elastic headband.

(claims 8 and 13) Broussard teaches the fabric band comprising non-irritating material, such as terry cloth.

(claims 9 and 14) Broussard teaches the fabric band lined with friction creating material. Terry cloth is non-irritating but is also covered with loops, such as in a towel, in order to absorb sweat. The loops would provide friction.

Response to Arguments

3. Applicant's arguments with respect to claims 1-14 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darwin P. Erezzo whose telephone number is (571) 272-4695. The examiner can normally be reached on M-F (7:30-4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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ANH TUAN T. NGUYEN
SUPERVISORY PATENT EXAMINER

6/30/06